

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF PUERTO RICO

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4 ANNETE TIRADO-PEREZ

5 Plaintiff

6 v.

7 OFFICE DEPOT PUERTO RICO, LLC

8 Defendant

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10 Civil No. 09-1407 (SEC)

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14 OPINION AND ORDER

15 This case is before this Court pursuant to a Notice of Removal filed by Defendant Office
16 Depot Puerto Rico LLC (“Defendant”) in the above captioned case, which was filed before the
17 Puerto Rico Court of First Instance, San Juan Part. Docket # 1. Plaintiff Annette Tirado-Perez
18 (“Plaintiff”) moves to remand the case. Docket # 5. After reviewing the filings, and the
19 applicable law, Plaintiff’s motion to remand is **GRANTED**.

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21 **Factual and Procedural Background**

22 On April 3, 2009, Plaintiff filed suit against Defendant in the Puerto Rico Court of First
23 Instance, alleging wrongful discharge, violations to the Consolidated Omnibus Budget
24 Reconciliation Act of 1985 (“COBRA”), and seeking lost wages, and attorney’s fees. Docket
25 # 1-2. Shortly thereafter, Defendant filed a notice of removal of said case, arguing that insofar
26 as Plaintiff seeks remedies under COBRA, this Court has original jurisdiction over the case, and
therefore, removal is proper. Docket # 1. On May 27, 2009, Plaintiff filed a motion voluntarily
dismissing all claims arising under COBRA, and requesting that the case be remanded to state
court for lack of subject-matter jurisdiction, pursuant to 28 U.S.C. § 1447. Docket # 5.

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28 **Applicable Law and Analysis**

29 Section 1441 states that “any civil action brought in a State court of which the district
30 courts of the United States have original jurisdiction, may be removed by the defendant or the

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2 defendants, to the district court of the United States for the district and division embracing the
 3 place where such action is pending..." 28 U.S.C. § 1441(a). In order for a defendant to remove
 4 an action from state court to federal court, it must file a timely notice of removal in the district
 5 court within thirty (30) days after the service of summons upon the defendant of the complaint,
 6 or after the receipt by the defendant of any pleading from which it may be first ascertained that
 7 the case is removable. Id. The party requesting removal bears the burden of showing that
 8 removal is proper. Vigier v. Marin, 568 F. Supp. 2d 193 (D.P.R. 2008).

9 In Carnegie-Mellon v. Cohill, 484 U.S. 343, 357 (1988), the U.S. Supreme Court held
 10 that, under the doctrine of pendent jurisdiction, district courts have "the discretion to remand
 11 to state court a removed case involving pendent claims upon a proper determination that
 12 retaining jurisdiction over the case would be inappropriate." In Cohill, a former employee filed
 13 a complaint against Carnegie-Mellon, alleging discrimination, among other claims, under
 14 federal and state laws. Upon Carnegie-Mellon's motion, the case was removed to federal court.
 15 However, six months later, therein plaintiff requested leave to amend the complaint to eliminate
 16 the federal law claim under which removal was granted, and as a result thereof, argued that
 17 remand to state court was proper. Considering that all federal-law claims were eliminated, and
 18 only pendent state law claims remained, the Supreme Court concluded that the district court had
 19 discretion to remand the case to state court. Id. at 351. Therefore, under the pendent jurisdiction
 20 doctrine, courts are allowed "to handle cases involving state-law claims in the way that will best
 21 accommodate the values of economy, convenience, fairness, and comity..." Id. at 351 (citing
 22 Mine Workers v. Gibbs, 383 U.S. 715 (1966)). The Court further notes that when the only
 23 federal claim is eliminated at an early stage of case, district courts have a powerful reason not
 24 to continue exercising its jurisdiction. Id. However, in this situation, the district court is not
 25 deprived of subject-matter jurisdiction, since the court had original jurisdiction at the time of
 26 the filing of the state court complaint pursuant to 28 U.S.C. § 1441(a). See Commonwealth of
Mass. v. V & M Mgmt., 929 F.2d 830, 835 (1st Cir. 1991) (citing Ching v. Mitre Corp., 921 F.2d

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2 11, 14 (1st Cir. 1990). Instead, in exercising its discretion, the court chooses not to exercise its
3 supplemental jurisdiction over the pendent state law claims, and remands the case to state court.

4 Upon reviewing the record, this Court finds that Plaintiff's state court complaint was
5 filed on April 3, 2009, and summons were served upon Defendant on April 22, 2009. Docket
6 #1-2. On May 4, 2009, Defendant filed the notice of removal (Docket # 1), and shortly
7 thereafter, Defendant filed the answer to the complaint (Docket # 4). Therefore, the present
8 case is in its early stages, the parties have not engaged in discovery, filed any dispositive
9 motions, nor has this Court ruled on any motions. Pursuant to Cohill, when the sole federal-law
10 claim is eliminated at an early stage, the district court has a powerful reason to not continue
11 exercising jurisdiction, and thus has the discretion to remand the case to state court. Brock v.
12 Debray, 869 F.Supp. 926, 928 (D. Al. 1994) (citing Cohill, 484 U.S. at 351). Considering the
13 above, this Court will exercise the discretion conferred by the pendent jurisdiction doctrine, and
14 refrain from exercising jurisdiction over the present suit.

15 **Conclusion**

16 Based on the foregoing, the instant case is **REMANDED** to state court.

17 **IT IS SO ORDERED.**

18 In San Juan, Puerto Rico, this 29th day of June, 2009.

19 S/SALVADOR E. CASELLAS
20 Salvador E. Casellas
21 U.S. Senior District Judge

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